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# *Collection Due Process Hearings 101*

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2002 IRS Nationwide Tax Forum



# Restructuring and Reform Act of 1998

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## **Taxpayers are entitled:**

- to same protections in dealing with the IRS as other creditors
- adequate notice of collection activity and
- a meaningful hearing before IRS deprives them of their property



## When?

Taxpayer entitled to a hearing before Appeals:

- after Notice of Federal Tax Lien **filed** (IRC § 6320)
- IRC § 6330: After notice of **intent** to levy issued



# IRC § 6320

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## Taxpayer:

- notified of notice of lien within 5 days of its filing
- Must request hearing within 30 days



## IRC § 6330

- IRS issues notice of intent to levy and right to hearing
  - Exceptions:
    - Jeopardy levy
    - Levy on state income tax refund
    - Right to a hearing is after levy
- Taxpayer must request hearing within 30 days



# Request for a Hearing

- Must be in writing
- Must include:
  - Name, address, daytime telephone number, signature, and date
- Form 12153 or any written request
- **Suspends collection statute**
- **IRS may not levy**
- **Right to judicial review of Appeals determination if requested timely**



# Equivalent hearing

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- Late request for hearing (more than 30 days)
- Same issues considered
- No collection suspension
- IRS may levy, but generally will not
- No right to judicial review of Appeals decision



# Nature of Hearing

- Informal
- By correspondence, telephone, or face-to-face meeting
- With an Appeals or Settlement Officer with no prior involvement in case (unless waived)



## What Appeals Considers: The "Big" Three

1. Did IRS follow required procedures?
2. Issues the taxpayer raises
3. Balancing the need for efficient tax collection with the taxpayer's legitimate concerns re its intrusiveness



# Sufficiency of Procedures

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- IRS Compliance employee documents their correctness to Appeals
- Statutory requirements
- IRS procedural requirements



# Issues the Taxpayer May Raise

- Innocent Spouse
- Challenges to the appropriateness of the proposed collection action
- Offers of Collection Alternatives



# Challenges to the appropriateness of proposed action

Excludes:

- Moral, religious, constitutional, conscientious objection, or similar grounds.
- Challenges to assessment process, unless separate FOIA request



# Collection Alternatives

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- Installment Agreements
- Offers In Compromise
- Substitution of other assets
- Posting of a Bond
  - Considered subject to IRS administrative requirements



# Underlying Liabilities???

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Must consider:

- Innocent spouse
- Self-assessed returns
- Assessments for which no statutory notices were issued



# Underlying Liabilities???

## Must not consider:

- Liabilities for which taxpayer received statutory notice of deficiency (90-day letter)
- Other opportunity for Appeals consideration
  - Example: Letter proposing trust fund recovery penalty



# Issues Precluded

- Issues decided by a court, or raised and considered at a previous CDP hearing or Appeals conference regarding this tax liability, and
- The taxpayer participated meaningfully in such a hearing or proceeding.



# Determination Letter

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Includes:

- Appeals determination re levy or notice of lien
- Consideration of the “Big Three”
- Explains right to request judicial review in appropriate court within 30 days



# Judicial Review

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Did Appeals abuse its  
discretion in this case?